

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicants:	Seth HABERMAN et al.	Confirmation No.:	9448
Application No.:	09/545,015	Art Unit:	2623
Filed:	April 7, 2000	Examiner:	Scott E. Beliveau
For:	SYSTEM AND METHOD FOR PERSONALIZED MESSAGE CREATION AND DELIVERY		

**DECLARATION UNDER 37 C.F.R. § 1.131**

We, Seth Haberman and Chet Schuler, hereby declare as follows:

1. We are the joint inventors of the above-referenced patent application.
2. All the work described in this declaration was performed in the United States.
3. All of the work described in this declaration was performed by us, or on our behalf and under our supervision.
4. Based on a review of our records, including the exhibits submitted herewith, we declare that we conceived a method and system for dynamically constructing a non-interactive, personalized advertisement to be viewed by an intended audience, as claimed in Claims 1 and 3-13, prior to March 23, 2000, which is the effective date under 35 U.S.C. § 102(e) of U.S. Patent Application Publication No. 2005/0166224 A1 (hereinafter "Ficco"), based on the filing date of U.S. Patent Application No. 09/533,842, from which Ficco claims priority.

5. We further declare that we achieved a constructive reduction to practice, in the form of a filed patent application, which was pursued with due diligence from at least prior to the effective date of Ficco, March 23, 2000, to the subsequent filing date of our application, April 7, 2000.
6. Attached as "Exhibit A" is a copy of a draft version of the subject patent application, which was sent to us via email on March 2, 2000 by the attorneys responsible for drafting the application. The content of the draft application clearly shows conception of the claimed invention on or before March 2, 2000, which is prior to the effective date of Ficco, March 23, 2000. Attorney notes in the draft have been redacted.
7. Furthermore, as shown by the table below, the draft application shows conception of all of the claimed features of the invention.

Claim	Examples of Support In Draft Application
1. A system for dynamically constructing a non-interactive personalized advertisement to be viewed by an intended audience, comprising:	Page 6, lines 8-19
an advertisement campaign, including:	Page 10, lines 6-11
an advertisement template, defining a framework for constructing said personalized advertisement, said advertisement template comprising a plurality of media segment slots constituting said personalized advertisement, said media segment slots including video segment slots and audio segment slots, wherein at least one video segment slot overlaps at least one audio segment slot;	Page 6, lines 8 – page 7, line 10; page 8, lines 2-12; page 10, lines 6-11; page 11, line 23 – page 12, line 4; page 12, line 9 – page 13, line 5; page 13, line 17 – page 14, line 1

a plurality of media segments including video segments and audio segments, each video segment selectable for insertion into at least one of said video segment slots of said advertisement template, wherein several of said video segments are selectable for a same one of said video segment slots of said advertisement template, and wherein each audio segment is selectable for insertion into at least one of said audio segment slots of said advertisement template;	Page 6, lines 8-19; page 10, lines 12-21; page 11, lines 2-11; page 11, line 23 – page 12, line 4
a plurality of expert rules; and	Page 8, lines 13-17; page 11, lines 2-11; page 21, lines 11-20; page 24, lines 11-16; Appendix (pages 26-27)
an advertisement assembly component, responsive to user profile data of said intended audience, and configured to apply said plurality of expert rules to said user profile data in order to get appropriate media segments for each of said media segment slots of said advertisement template from a database and incorporate said appropriate media segments into said advertisement template, in order to assemble said personalized advertisement for said intended audience,	Page 6, line 8 – page 7, line 10; page 11, lines 2-11; page 12, lines 2-4; page 10, lines 12-21; page 11, lines 2-11; page 12, lines 2-4; page 12, line 18 – page 14, line 11
said assembly performed without interaction by said intended audience.	Page 6, lines 14-16; page 9, line 27 – page 8, line 5; page 11, lines 4-7; page 12, line 2-4; page 28, lines 15 and 25
3. The system of claim 1 wherein said advertisement assembly component also uses environmental or temporal information in order to select appropriate media segments for assembling said personalized advertisement.	Page 7, lines 3-10
4. The system of claim 1 wherein said media segments are selected from the group including audio, video, background, animation, synthesized graphics and voice.	Page 28, lines 23-24
5. The system of claim 1 wherein several of said media segments which correspond to a same one of said media segment slots of said advertisement template are of different lengths, and said advertisement template appropriately adjusts said personalized advertisement based on a length of a selected one of said media segments.	Page 21, lines 25-29; page 28, line 29
6. The system of claim 1 wherein said personalized advertisement is assembled immediately before presentation to said intended audience.	Page 7, lines 6-8; page 12, lines 5-8

7. The system of claim 1 wherein said user profile data of said intended audience is obtained from a plurality of user information data sources.	Page 7, lines 27-29
8. The system of claim 7 wherein said advertisement campaign includes a target entity profile, said target entity profile providing an indication of appropriate media segments for selected user profile data.	Page 6, lines 22-24; page 14, lines 24-29
9. The system of claim 8 wherein said target entity profile provides an indication for selecting said intended audience from said user information data sources.	Page 16, lines 1-7
10. A method for dynamically constructing a non-interactive personalized advertisement for viewing by an intended audience; said method comprising:	Page 6, lines 8-19; page 28, lines 15 and 25
obtaining user profile data for said intended audience;	Page 7, line 27 – page 8, line 1
selecting an advertisement template, said advertisement template defining a framework for constructing said personalized advertisement, and including a plurality of media segment slots constituting said personalized advertisement, said media segment slots including video segment slots and audio segment slots, wherein at least one video segment slot overlaps at least one audio segment slot;	Page 6, lines 8 – page 7, line 10; page 8, lines 2-12; page 10, lines 6-11; page 11, line 23 – page 12, line 4; page 12, line 9 – page 13, line 5; page 13, line 17 – page 14, line 1
applying a plurality of expert rules to said user profile data and said advertisement template, in order to get, from a plurality of media segments including video segments and audio segments in a database, appropriate media segments for insertion into said plurality of media segment slots in said advertisement template, wherein several of said video segments are selectable for a same one of said video segment slots of said advertisement template;	Page 8, lines 13-17; page 11, lines 2-11; page 21, lines 11-20; page 24, lines 11-16; Appendix (pages 26-27)
assembling said personalized advertisement using said advertisement template and said selected media segments, without any interaction by said intended audience; and	Page 7, lines 3-10; page 11, lines 2-11; page 12, lines 2-4; page 10, lines 12-21; page 11, lines 2-11; page 12, lines 2-4; page 12, line 18 – page 14, line 11
providing said assembled personalized advertisement in a format for delivery to said intended audience for viewing.	Page 8, lines 18-27; page 11, lines 12-22
11. The method of claim 10 wherein said advertisement template and plurality of message segments are created as part of an advertisement campaign.	Page 6, lines 8-19

12. The method of claim 10 wherein said steps of assembling said personalized advertisement and providing said assembled personalized advertisement is performed immediately before delivery to said intended audience.	Page 7, lines 6-8; page 12, lines 5-8
13. (Currently Amended) A method for dynamically constructing a non-interactive personalized advertisement for viewing by an intended audience; said method comprising:	Page 6, lines 8-19; page 28, lines 15 and 25
obtaining user profile data for said intended audience;	Page 7, line 27 – page 8, line 1
creating a plurality of media segments, including video segments and audio segments;	Page 10, lines 12-21
creating an advertisement template, said advertisement template defining a framework for constructing said personalized advertisement, and including a plurality of media segment slots constituting said personalized advertisement, said media segment slots including video segment slots and audio segment slots, wherein at least one video segment slot overlaps at least one audio segment slot;	Page 6, lines 8 – page 7, line 10; page 8, lines 2-12; page 10, lines 6-11; page 11, line 23 – page 12, line 4; page 12, line 9 – page 13, line 5; page 13, line 17 – page 14, line 1
applying a plurality of expert rules to said user profile data and said advertisement template, in order to select, from a plurality of media segments including video segments and audio segments in a database, appropriate media segments for insertion into said plurality of media segment slots in said advertisement template, wherein several video segments are selectable for a same one of said video segment slots of said advertisement template;	Page 8, lines 13-17; page 11, lines 2-11; page 21, lines 11-20; page 24, lines 11-16; Appendix (pages 26-27)
assembling said personalized advertisement using said advertisement template and said selected media segments, without any interaction by said intended audience; and	Page 7, lines 3-10; page 11, lines 2-11; page 12, lines 2-4; page 10, lines 12-21; page 11, lines 2-11; page 12, lines 2-4; page 12, line 18 – page 14, line 11
providing said assembled personalized advertisement in a format for delivery to said intended audience for viewing.	Page 8, lines 18-27; page 11, lines 12-22

8. Attached as “Exhibit B” are copies of two bills for legal services, dated April 19, 2000 and June 16, 2000, in connection with the preparation of the subject application. The bills indicate that work was continuously performed on the application on the following dates in the period beginning prior to the effective date of Ficco, March 23, 2000, through

the date of filing of the application, April 7, 2000 (the itemized work descriptions are provided in parentheses): March 22, 2000 ("Meeting with Chet; Changes patent draft, drawings, claims, list of other materials needed"); March 23, 2000 ("Change to patent application; outstanding issues"); March 24, 2000 (Changes to patent application based on reviewers changes"); March 29, 2000 (Remaining areas of application which need disclosure; Changes from C. Schuler); March 30, 2000 ("Details needed for application; Telephone conference with S. Haberman, detailed description; Adding new material"); April 4, 2000 ("Patent application additions to detailed specification; correspondence with inventors"); April 5, 2000 ("Patent applications more changes to detailed description; Incorporating client comments into specification); and April 6, 2000 ("Applications; Claims and claim hierarchies; Changes to detailed description; Filing and documentation").

9. From the billing information discussed above, it can be seen that work was performed on the subject application by the attorneys on seven days out of the twelve business days in the critical period (between March 23 and April 7, inclusive). In addition to the work performed by the attorneys, we, the inventors, also worked on the application during the critical period by reviewing the drafts provided by the attorneys and discussing the application with the attorneys. Although detailed records of our participation have not been included herewith, the itemized work descriptions discussed above allude to the fact that work was performed by us on the application during this period. Accordingly, the bills attached as Exhibit B clearly show due diligence in pursuing the constructive reduction to practice, from prior to the effective date of Ficco, March 23, 2000, to the subsequent filing date of the application, April 7, 2000.

10. The showing of facts provided above, including the attached exhibits, is believed to be such, in character and weight, as to establish conception of the invention prior to the effective date of the Ficco reference coupled with due diligence from prior to said date to the subsequent filing of the application. We therefore believe that we have established invention of the subject matter of the rejected claims prior to the effective date of the reference, in accordance with 37 C.F.R. § 1.131.
11. We further declare that all statements made herein of our knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that the making of willfully false statements and the like is punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Inventor: Seth Haberman

Signed: \_\_\_\_\_

Dated: \_\_\_\_\_

Inventor: *Chester L. Schuler*  
Chet Schuler

Signed: *Chester L. Schuler*

Dated: *10/30/07*